

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE DAVID and RODNEY CLURE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

BANKERS LIFE AND CASUALTY
COMPANY, a foreign corporation,

Defendant.

Case No.

NOTICE OF REMOVAL

Defendant BANKERS LIFE AND CASUALTY COMPANY (“Bankers” or
“Defendant”) hereby removes *Christine David, et al. v. Bankers Life and Casualty Co.*, No. 11-
2-21154-1 SEA, from the Superior Court of King County, State of Washington, to the United
States District Court for the Western District of Washington, Seattle Division, and respectfully
states the following in support of this removal:

I. INTRODUCTION

1. This case is a class action lawsuit alleging that Bankers violated the Washington
Minimum Wage Act (“WMWA”) by classifying its insurance agents (“Agents”) as independent
contractors instead of as employees. Plaintiffs assert that as a result of this misclassification,
Defendants denied Agents minimum wages and overtime pay in violation of the WMWA.

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2. Bankers previously removed this action to this Court on July 20, 2011, based on the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”). *Christine David v. Bankers Life and Casualty Co., et al.*, Case No. 2:11-cv-01211-RSL. This Court, by the Honorable Robert S. Lasnik, remanded this action to the Superior Court based on Banker’s failure to prove that the amount in controversy was greater than \$5,000,000.

3. The current removal is appropriate based on new facts provided by Plaintiffs on May 19, 2014. Plaintiffs now assert that they seek damages of more than \$16,000,000. This easily meets the \$5,000,000 amount in controversy requirement for removal under CAFA.

II. DIVERSITY JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

4. The Court has original jurisdiction over this action under CAFA. 28 U.S.C. § 1332(d)(2). To remove this class action pursuant to CAFA, Defendant must demonstrate that this action involves: (A) minimal diversity; (B) at least 100 class members; and (C) an amount in controversy exceeding \$5,000,000. *Id.* Bankers meets each of these requirements.

A. The Parties Have Minimal Diversity

5. The parties are diverse because the citizenship of Bankers differs from the citizenship of at least one Plaintiff. 28 U.S.C. § 1332(d)(2)(A) (conferring jurisdiction if “any member of a class of plaintiffs is a citizen of a State different from any defendant”).

6. Named Plaintiff Rodney Clure is a citizen of Washington State. First Amended Class Action Complaint (“Compl.”) ¶ 3. (A true and correct copy of the First Amended Complaint is attached as Exhibit A to the Declaration of Daniel L. Thieme (“Thieme Decl.”), which is attached hereto as Exhibit 1.) Named Plaintiff Christine David is also a citizen of Washington State, although she is currently spending time teaching in China. (Compl. ¶ 2); Thieme Decl. ¶ 3, and Exhibit B thereto (excerpt of David deposition).

7. Bankers is a citizen of Illinois, and not a citizen of Washington State. Bankers is incorporated under the laws of the State of Illinois, and its principal place of business, pursuant to the “nerve center” test, is at its headquarters in Chicago, Illinois (Declaration of Karl W.

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Kindig, attached hereto as Exhibit 2, at ¶ 2-3). *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010)(adopting nerve center test for corporate citizenship). Plaintiffs concede that Bankers is incorporated and has its principal place of business in the state of Illinois. (Compl. ¶ 4).

8. Given that Plaintiffs Clure and David are citizens of Washington State, and Bankers is a citizen only of Illinois, there is minimal diversity in this case.

B. The Class Exceeds 100 Members

9. The class exceeds 1,000 members. Thieme Decl.¶ 4 (authenticating Findings of Fact and Conclusion of Law dated January 22, 2014, attached as Exhibit C to Thieme Decl.).

C. The Amount in Controversy Exceeds \$5,000,000

10. On May 19, 2014, Plaintiffs supplemented their answer to Bankers' Interrogatory regarding damages by stating that the total damages they claim for the period of June 16, 2008 through December 31, 2011 are estimated at \$16,928,996.¹ Thieme Decl. ¶ 5, and Exhibit D thereto (Plaintiffs' supplemented discovery response), at the last page, line 11. This new allegation contradicts and negates Plaintiffs' allegation in the Complaint that they seek less than \$5,000,000. *See Std. Fire Ins. Co. v. Knowles*, __ U.S. __, 133 S. Ct. 1345, 1347-49 (2013); *Rodriguez v. AT&T Mobility Services, LLC*, 728 F.3d 975, 981 (9th Cir. 2013).

III. TIMELINESS OF REMOVAL

11. Pursuant to 28 U.S.C. § 1446(b), a defendant must file a notice of removal within thirty days from the date it first objectively learns, though the initial pleading or another paper in the case, that the action is removable. 28 U.S.C. § 1446(b)(1) & (b)(2)(C)(3); *Rea v. Michaels Stores, Inc.*, 742 F.3d 1234, 1237-38 (9th Cir. 2014). A second removal is timely when done within 30 days of a new paper in the case that shows that the previously unremovable case has become removable. *Rea*, 742 F.3d at 1238.

12. Plaintiffs' May 19, 2014 Interrogatory answer was the first paper in this case that revealed that Plaintiffs' claim for damages exceeds \$5,000,000. Prior to the May 19, 2014

¹ Plaintiffs' calculation covers only part of the current class period.
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1 discovery answer, the only quantification of damages that Plaintiffs had provided in any paper in
2 this case was in the Complaint, where they alleged, as recently as the First Amended Complaint
3 filed on August 28, 2013, that they sought less than \$5,000,000 in damages. (Compl. ¶ 28).

4 **IV. NOTICE**

5 13. This Notice of Removal will be served promptly on Plaintiffs and filed with the
6 Clerk of the Superior Court of the State of Washington for King County, as required by 28
7 U.S.C. § 1446(d).

8 **V. VENUE**

9 14. District Venue: Venue is proper in the Western District of Washington because
10 this is the district court of the United States for the district embracing the place where this action
11 is currently pending. 28 U.S.C. §1441(a).

12 15. Intradistrict Assignment: Venue is proper in the Seattle Division, pursuant to
13 LCR 3(d)(1), because the action is currently pending in King County.

14 **VI. CONCLUSION**

15 16. WHEREFORE, further proceedings in this Action should be discontinued in the
16 Superior Court, and the Action should be removed to the United States District Court for the
17 Western District of Washington.

1 May 22, 2014

2
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14 BANKERS LIFE AND CASUALTY

COMPANY

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CERTIFICATE OF SERVICE

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is One Union Square, 600 University Street, Suite 3200, Seattle, Washington 98101.3122. I certify that on May 22, 2014, I filed the foregoing document with the Clerk of the Court using the CM/ECF System.

I further certify that I served a true copy of the foregoing document in the manner indicated on the person(s) set forth below:

- ☐ by emailing a true copy of the same to the email addresses of the person(s) set forth below.
- ☐ by placing a true copy of the same for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Seattle, Washington addressed as set forth below.
- ☒ by causing a copy of the same to be hand-delivered to the person(s) at the address(es) set forth below.

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ATTORNEYS FOR PLAINTIFF

I declare under the penalty of perjury under the laws of the State of Washington that the above is true and correct. Executed on May 22, 2014, at Seattle, Washington.

s/Sally Swearingner
sswearingner@littler.com

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